Editor's note: Appealed -- aff'd, Civ.No. 83-626-C (ED Ok. June 20, 1985), aff'd, No. 85-2077 (10th Cir. July 1, 1987)

JOE N. JOHNSON
J. BASS MAHONEY
RESOURCES INVESTMENT CORP.

IBLA 83-52 Decided July 29, 1983

Appeal from decisions of the New Mexico State Office, Bureau of Land Management, dismissing protests of award of priority to conflicting noncompetitive, over-the-counter oil and gas lease offers. NM-A 43817-OK, etc.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

   Statements required of other parties in interest in connection with a lease offer under 43 CFR 3102.2-7(b) (1981) must include a statement affirming the party's compliance with the acreage limitations of 43 CFR 3101.1-5 and 3101.2-4. With respect to an over-the-counter lease offer, where such a statement is not filed timely within 15 days of filing the lease offer as required by regulation, but is filed prior to final rejection of the lease offer, the offer may be reinstated only with priority as of the time the required information is filed.

2. Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

   An over-the-counter oil and gas lease offer which is executed by two offerors will not be rejected for failure to provide a copy of an agreement with other parties in interest under 43 CFR 3102.2-7(b) (1981) where both offerors

have properly certified that they are the sole parties in interest.

APPEARANCES: Terry Noble Fiske, Esq., Charles L. Kaiser, Esq., Denver, Colorado, for appellants; John H. Harrington, Esq., Office of the Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Joe N. Johnson, J. Bass Mahoney, and Resources Investment Corporation (RIC), have appealed from two decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated August 31 and September 2, 1982, dismissing appellants' protests. The decision of August 31, 1982, determined that 16 over-the-counter oil and gas lease offers filed by appellant Johnson 1/ would only be allowed to earn priority from the time of the filing of supplemental documents required by 43 CFR 3102.2-7(b) (1981) relating to other parties in interest. BLM concluded that conflicting noncompetitive oil and gas lease offers for the same parcels of land had acquired priority. The second decision dismissed appellants' protest to the conflicting offers. Appellants had alleged that the offerors failed to comply with 43 CFR 3102.2 requiring the filing of statements of qualifications.

On December 30, 1980, appellant Johnson filed the noncompetitive over-the-counter oil and gas lease offers which are the subject of this appeal. Johnson indicated that RIC and J. Bass Mahoney were other parties in interest in the offers and that each would own a one-third interest in the leases if issued.

By letters dated January 6 and 7, 1981, RIC and Mahoney filed statements indicating that they were parties in interest in the offers filed by Johnson. The statement submitted by RIC stated: "This letter will acknowledge that Resources Investment Corporation will have an undivided 1/3 interest in the captioned lease applications at such time as the leases are issued by you. Resources is qualified to hold federal oil and gas leases and its qualification number is W-56943."

1/ The following are the oil and gas lease offers filed by Joe N. Johnson which are affected by the BLM decision:

NM-A 43817-OK
NM-A 43822-OK
NM-A 43825-OK and NM-A 43826-OK
NM-A 43828-OK
NM-A 43832-OK through NM-A 43834-OK
NM-A 43836-OK and NM-A 43837-OK
NM-A 43846-OK
NM-A 43848-OK
NM-A 43851-OK
NM-A 43866-OK
NM-A 43869-OK
NM-A 43878-OK

On September 30, 1981, Peter W. Hummel and Frank G. Wells filed noncompetitive over-the-counter lease offers embracing much of the same land described in the Johnson offers. On June 14, 1982, Hummel and Wells filed a protest against the prospective issuance of 14 leases in response to appellants' offers of December 30, 1980, alleging that the offers were defective in that Johnson, Mahoney, and RIC failed to file the information required by the regulation regarding parties in interest, 43 CFR 3102.2-7 (1981). 2/ On July 26, 1982, appellant RIC resubmitted a statement of its interest in the lease offers including a statement asserting RIC's compliance with the acreage limitations. By letter dated August 9, 1982, BLM acknowledged receipt of RIC's statement and informed appellant Johnson that his lease offers would earn priority from July 26, 1982, the date the required information was filed with BLM.

On August 18, 1982, appellant Johnson filed a protest with BLM asserting that conflicting offerors Hummel and Wells had failed to comply with the regulations pertaining to sole parties in interest and partnerships. On August 23, 1982, Johnson filed another protest of BLM's decision to change the priority date of the Johnson lease offers. The BLM decision of August 31, 1982, followed and stated in part:

> The oil and gas lease offers listed above were filed on December 30, 1980. At the time of the filing, these offers were considered defective as to the statements on sole party in interest submitted by Resources Investment Company which is not a curable defect. On July 26, 1982, a completed statement by Resources was submitted. Therefore, the priority date on these offers was reestablished as of July 26, 1982.

The BLM decision of September 2, 1982, dismissed appellant Johnson's protest of August 18, 1982, on the ground that Hummel and Wells had filed their lease offers as sole parties in interest and, therefore, compliance with the regulations pertaining to other parties in interest was not required. This appeal was filed from the BLM decisions.

Appellants contend on appeal that RIC's representation in its statement, which was timely filed within 15 days of the filing of the lease offers,

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2/ Subsequent to the decisions appealed from in this case, this regulatory provision was repealed effective Feb. 26, 1982. 47 FR 8544 (Feb. 26, 1982). In the absence of intervening rights which would be adversely affected (e.g., a conflicting offeror whose offer was in compliance with the regulations at the time of filing), a regulation which is amended while an appeal is pending may be applied in its amended form in deciding the case on appeal where it would benefit the appellant. James E. Strong, 45 IBLA 386 (1980). However, the conflicting Hummel and Wells offers, coupled with the obligation of the Secretary to issue noncompetitive oil and gas leases to the first-qualified applicant under 30 U.S.C. § 226(c) (Supp. V 1981), preclude application of the revised regulations in this case to the extent lands described in Johnson's offers were the subject of conflicting offers filed prior to Feb. 26, 1982.

that it was qualified to hold oil and gas leases, constitutes an affirmation of its compliance with the acreage limitations which meets the requirements of 43 CFR 3102.2-7(b) (1981). With regard to the conflicting lease offers, appellants contend that both Hummel and Wells are parties in interest to the lease offers and, thus, that a signed statement as to the nature of the agreement between them was required to comply with 43 CFR 3102.2-7 (1981). In the alternative, appellants contend that the offers filed by Hummel and Wells were, in effect, filed on behalf of an association consisting of the two offerors. Thus, it is asserted that compliance with the evidence of partnership qualifications required by 43 CFR 3102.2-4 (1981) was necessary.

The two issues to be resolved on appeal are first, whether the sole party in interest statement submitted by RIC on January 6, 1981, satisfied the requirements of 43 CFR 3102.2-7(b) (1981), and second, whether Hummel and Wells as co-offerors were obligated to file party in interest statements under 43 CFR 3102.2-7 (1981) or evidence of partnership qualifications under 43 CFR 3102.2-4 (1981).

[1] The regulation at 43 CFR 3102.2-7(b) (1981), provides that, where there are other parties in interest in a lease offer, the offeror shall file "not later than 15 days after the filing of the offer," a statement setting forth the nature of any oral understanding and a copy of any written agreement between the offeror and the other parties in interest. In addition, the "statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title." Id.

A review of the document filed by RIC on January 6, 1981, discloses that RIC failed to comply with that party of the regulation which required that a statement signed by a party in interest set forth compliance with the acreage limitations of 43 CFR 3101.1-5 and 3101.2-4. An oil and gas lease offer in which the offeror is not the sole party in interest is properly rejected where a party in interest has not filed within 15 days of filing the lease offer a statement setting forth his compliance with the acreage limitations as required by the regulation at 43 CFR 3102.2-7(b) (1981). Kenneth H. Gray, 60 IBLA 110 (1981). 3/ Reference by RIC to its corporation qualifications file, although permitted for establishing a corporation's qualifications to hold oil and gas leases, does not constitute a certification as to compliance with the acreage limits. The information required by 43 CFR 3102.2-5 (1981) to qualify a corporation does not relate to acreage holdings by the corporation.

A distinction is properly drawn between qualifications to hold leases generally and qualifications to hold a particular lease regarding the certification that issuance of that lease will not cause the offeror (or party

3/ The Board has held that where the information required by 43 CFR 3102.2 ! 7(b) is supplied by supplemental filing prior to final rejection of an over ! the ! counter lease offer, the offer may be reinstated with priority as of the time the required information is filed. Sumatra Energy Co., 68 IBLA 313 (1982).

in interest) to be in excess of the statutory and regulatory acreage limits. Cf. Dennis M. Joy, 66 IBLA 260 (1982) (certain documents with respect to applicant's qualifications pertain to the individual lease application and must be stated thereon). The certification of compliance with acreage limitations relates directly to the lease offer with respect to which it is made. The offeror makes this certification directly on the lease form when executing the offer. Interested parties were required by 43 CFR 3102.2-7(b) (1981) to make this certification in a statement filed either with the lease offer or within 15 days thereafter. Accordingly, BLM properly found the statement initially filed by RIC inadequate under the regulation and afforded appellants' offers priority as of the date of filing the revised statement.

[2] With regard to appellants' protest of the Hummel and Wells lease offers, the filing of an oil and gas lease offer by two persons, both acting as offeror, has previously been sustained by this Board where the offer form is signed by the individuals named thereon as offerors. McLain Hall, 61 IBLA 202 (1982). The issuance of leases to two individuals as joint offerors has often been recognized by the Department where the offer has been signed by both individuals as offerors. See, e.g., Turner C. Smith, Jr., 66 IBLA 1, 89 I.D. 386 (1982); Al Warden, 67 I.D. 223 (1960); W. H. Burnett, 64 I.D. 230 (1957). Indeed, the lease form itself contains signature lines for two lessees. The regulation regarding other parties in interest requiring disclosure of the names of such parties and the agreement between them applies to parties other than those named as offerors on the lease offer. See Clayton H. Read, 49 IBLA 200, 203 (1980) (Judge Burski concurring). The cases of Harry Reich, 27 IBLA 123 (1976), and Phillip E. Flanagan, 57 IBLA 357 (1981), cited by appellants do not hold to the contrary.

In Harry Reich, supra, the lease application was signed by two applicants and disclosed certain other parties in interest. Rejection of the application was affirmed on the ground, inter alia, that no adequate description of the relationship between the applicants and the parties in interest was given. Similarly, in Phillip E. Flanagan, supra, the issue was the adequacy of the Statement of the agreement between the lease applicant and the party in interest.

In support of their contention that the two offerors constitute parties in interest requiring compliance with the regulation at 43 CFR 3102.2-7 (1981), appellants quote the following part of the preamble to the regulations:

> A few of the comments misconstrued the proposed rulemaking as requiring a separate statement listing other parties in interest to accompany each application or offer. There was no intention to alter the procedure in existing regulations that allows other parties in interest to be listed directly on the lease application or offer. The rule does require, however, that any application bearing the names of multiple parties must be accompanied or followed by separate statements setting forth the nature of the agreement between them. (Emphasis added.) 45 Fed. Reg. 35158 (May 23, 1980.)

45 FR 35158 (May 23, 1980). Appellants reliance thereon is misguided. Under the regulation, parties participating in the simultaneous filing procedures

file an "application" to lease. 43 CFR 3112.2-1. The name of only one party may appear on the form as an "applicant." 43 CFR 3112.2-1(c). Therefore, any additional party with an interest in the lease must, of necessity, be disclosed as another party in interest requiring compliance with 43 CFR 3102.2-7 (1981).

Similarly, we do not believe that the regulation at 43 CFR 3102.2-4 (1981) regarding evidence of qualifications of a partnership to hold leases was applicable where two individuals execute an over-the-counter lease offer in both their individual names as offerors, thereby certifying to their qualifications to hold a lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge